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## CENTRAL INTELLIGENCE AGENCY RETIREMENT

Title V of the conference agreement addresses federal employee retirement benefits for officers and employees of the Central Intelligence Agency (CIA). One section of Title V also addresses a related matter involving very limited numbers of National Security Agency (NSA) employees and Defense Intelligence Agency (DIA) employees.

After enactment of the Federal Employees' Retirement System Act of 1986, employees of the Central Intelligence Agency will generally fall into four basic categories, each with differing retirement benefits and obligations:

(1) CSRS Participants. Most Central Intelligence Agency employees whose federal service began before December 31, 1983 participate in the Civil Service Retirement System maintained under subchapter III of chapter 83 of title 5, United States Code. These CIA employees enjoy the same benefits as federal employees in other agencies who participate in the Civil Service Retirement System.

(2) CIARDS Participants. In 1964, Congress enacted the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) to establish a CIA Retirement and Disability System (CIARDS) for CIA employees whose duties are "(i) in support of Agency activities abroad hazardous to life or health or (ii) so specialized because of security requirements as to be clearly distinguishable from normal government employment" (Sec. 203 CIA, Retirement Act). The CIA

-2-

employees participating in the CIARDS receive retirement benefits superior to those provided generally by the CSRS, benefitting in particular from a higher annual pension accrual rate and an option for early retirement. The group of CIARDS participants will consist of CIA employees whose federal service began prior to December 31, 1983 who are, or who will become eligible (whether before, on or after December 31, 1983), to participate in CIARDS in accordance with the CIA Retirement Act and implementing regulations.

(3) FERS Regular Participants. Central Intelligence Agency employees whose federal service began after December 31, 1983 will participate in the Federal Employees' Retirement System (FERS) established under the new chapter 84 of title 5, United States Code. Unless they fall within the special category of CIA employees who qualify for FERS treatment equivalent to that accorded law enforcement officers, the CIA employees covered by the FERS will incur the same obligations and receive the same benefits as do most federal employees covered by the FERS.

(4) FERS Section 203 Criteria Participants. The CIA employees whose federal service began after December 31, 1983 (and who therefore participate in the FERS) and who meet the criteria prescribed under section 203 of the CIA Retirement Act, namely that their CIA duties are "(i) in support of Agency activities abroad hazardous to life or health or (ii) so specialized because of security requirements as to be clearly distinguishable from normal government employment," will incur the same obligations and receive the same benefits as do federal employees covered by the FERS who are law enforcement officers. The FERS accords

-3-

preferential benefits to law enforcement officers in comparison to most other types of federal employees, and thus CIA's FERS section 203 criteria participants will receive preferential benefits in comparison to CIA FERS regular participants.

The conferees agreed that, to improve the security of intelligence sources, methods and activities, the CIA should administer all federal retirement systems as they apply to CIA officers and employees. The conference agreement provides for such CIA administration. Providing for CIA administration of retirement systems as they apply to CIA employees reduces unnecessary dissemination within the government of intelligence personnel information, improving security. The administration of the retirement systems by CIA as to CIA employees will not differ substantively from OPM administration of such systems with respect to other federal employees. The benefits and obligations of CIA employees and non-CIA employees within a retirement system will not differ; only the agencies administering the system as to those employees will differ. As a result of provisions of the conference agreement providing for CIA administration of the CSRS and the FERS with respect to CIA employees, all aspects of retirement system administration with regard to CIA employees will remain completely within the CIA, except for Merit Systems Protection Board and federal court review of certain adverse retirement decisions made by the DCI with respect to CIA CSRS and regular FERS employees. The conferees expect the MSPB and the federal courts to conduct such proceedings in a manner consistent with the protection of intelligence sources, methods and activities. The conferees also expect close cooperation

-4-

among OPM, the Executive Director of the Thrift Investment Board, and the DCI to ensure both uniform administration of federal retirement systems and the protection of intelligence sources, method and activities, particularly as the conference agreement provides for OPM and Executive Director, Thrift Investment Board inspection and audit of CIA-related disbursements from the Civil Service Retirement and Disability Fund and the Thrift Savings Plan.

The DCI must submit all retirement regulations he issues to the intelligence committees of the Congress before the regulations take effect.

#### Section-by-Section Explanation

Title V of the conference agreement addresses Central Intelligence Agency retirement and related matters. Title V consists of sections 501 through 506 amending the Central Intelligence Agency Retirement Act of 1964 for Certain Employees and title 5 of the United States Code and section 507 making related changes.

#### Section 501: References

Section 501 of the conference agreement amends the CIA Retirement Act of 1964.

Section 501(1) amends section 201(c) of the CIA Retirement Act to make clear that the provisions of section 201(c), which provide for the finality and unreviewability of DCI administration of the CIA Retirement Act, do not override the provision of section 305(d) of the CIA Retirement Act (added by section 506 of the conference agreement) which permits CIA regular FERS

-5-

employees to appeal certain adverse retirement determinations made by the DCI to the Merit Systems Protection Board and the federal courts in accordance with section 8461(e) of title 5 (as added by section 101 of the conference agreement).

Section 501(2) replaces the phrase "this Act" each place it appears in Title II of the CIA Retirement Act with the phrase "this title" (except in two specified sections), which is necessitated by the addition of a new Title III to the CIA Retirement Act by section 506 of the conference agreement.

Section 501(3) inserts the phrase "under this title" in Title II of the CIA Retirement Act after the phrase "payable from the fund" (meaning the CIA Retirement and Disability Fund) each place it appears in the title, which is necessitated by the addition of a new Title III to the CIA Retirement Act by section 506 of the conference agreement.

#### Section 502: Contributions to the CIA Retirement and Disability System

Section 502 of the conference agreement amends section 211 of the CIA Retirement Act of 1964.

Section 502(1) amends section 211 of the CIA Retirement Act to provide for an exception from the CIARDS contribution requirement of seven percent of basic salary contained in section 211(a) for participants described in new section 211(d) of the CIA Retirement Act as added by section 502(2) of the conference agreement.

Section 502(2) adds to section 211 of the CIA Retirement Act a new subsection (d) providing for contributions to the CIA Retirement and Disability Fund by CIARDS participants subject to title II of the CIA.

-6-

Retirement Act before January 1, 1984, whose service is employment for purposes of Title II of the Social Security Act and the social security tax provisions of the Internal Revenue Code but whose service is not creditable service under the new Federal Employee Retirement System. Such individuals would be CIARDS annuitants (who were participants before January 1, 1984) who are recalled to service after a one year break in service, political appointees, or individuals described in section 301(c)(1) of the CIA Retirement Act. The conferees intend that this provision not apply to any individuals other than individuals who fall within one of these categories. The contribution due to the CIA Retirement and Disability Fund from such an individual is equal to seven percent of basic pay, less the amount of social security taxes deducted and withheld from basic pay.

Section 503: Offset of Annuity by Amount of Social Security Benefits

Section 503 of the conference agreement amends section 221 of the CIA Retirement Act of 1964 by adding a new section 221(p). Section 221(p) provides that the annuity payable under CIARDS to an individual described in section 301(c)(1) of the CIA Retirement Act (as added by section 506 of the conference agreement) shall be offset by the amount of the individual's Social Security benefits, in the manner provided by section 8349 of title 5, United States Code (as added by section 201(b) of the conference agreement). An individual described in section 301(c)(1) of the CIA Retirement Act is one who separates, or has separated, from federal service after having been a CIA employee subject to CIARDS and having completed at least 5 years of civilian service creditable under CIARDS. The social security offset under subsection

-7-

221(p) does not apply to the annuity of an individual described in section 301(c)(1) who has elected to participate in the new FERS.

Section 504: Thrift Savings Fund Participation by Participants in the CIARDS

Section 504 of the conference agreement adds a new section 293 to the CIA Retirement Act of 1964. Section 293 permits CIARDS participants to remain in CIARDS and to elect to participate in the Thrift Savings Plan on the same basis as CSRS participants may remain in the CSRS and elect to participate in the Thrift Savings Plan under section 8351 of title 5, United States Code (as added by the conference agreement). Sections 8461(k) and (m) of title 5, United States Code (as added by the conference agreement) apply with respect to contributions to the Thrift Savings Plan, and resultant earnings, by CIA employees who have elected, while remaining in the CIARDS or the CSRS, to participate in the Thrift Savings Plan. This ensures that the DCI will handle all administration with respect to CIARDS and CSRS participants who have elected to participate in the Thrift Savings Plan.

Section 505: Alternative Forms of Annuities

Section 505 of the conference agreement add a new section 294 to the CIA Retirement Act of 1964 to authorize the DCI to provide by regulation for alternative forms of annuities for CIARDS participants to elect upon retirement. To the maximum extent practicable, the regulations and the alternative forms of annuities must meet the requirements prescribed in section 8343a of title 5, United States Code (as added by the conference

-8-

agreement). The DCI must submit the regulations to the intelligence committees of the Congress before they take effect.

Section 506: Participation in the Federal Employees' Retirement System

Section 506 of the conference agreement enacts a new Title III of the CIA Retirement Act of 1964 for Certain Employees, consisting of sections 301 - 307.

Section 301 of the CIA Retirement Act provides for application to certain CIA employees of the Federal Employee Retirement System established under chapter 84 of title 5, United States Code (as added by section 101 of the conference agreement).

Section 301(a) provides that the FERS applies to all Agency personnel any of whose service after December 31, 1983 is employment for purposes of Title II of the Social Security Act and the social security tax provisions of the Internal Revenue Code, except as provided in subsections 301 (b) and (c).

Section 301(b) provides that CIARDS participants who were CIARDS participants on or before December 31, 1983, and who have not had a one year break in service since then, are not subject to the FERS, without regard to whether they are subject to Title II of the Social Security Act.

Section 301(c) provides that the FERS does not apply to an individual who separates, or has separated, from federal service after having been a CIA employee subject to CIARDS and having completed at least 5 years of civilian service creditable under CIARDS, unless the individual elects to become subject to the FERS.

Section 301(d) provides that the provisions of chapter 84 of title 5 (as added by section 101 of the conference agreement), which establishes the FERS,



-9-

apply to CIA employees covered by the FERS, subject to any exceptions and special rules provided in Title III of the CIA Retirement Act with respect to such CIA employees.

Section 302 of the CIA Retirement Act provides special rules for CIA FERS section 203 criteria employees.

Section 302(a) provides that CIA employees subject to the FERS who are designated by the DCI under the criteria prescribed in section 203 of the CIA Retirement Act shall be treated for purposes of their retirement benefits and obligations under the FERS as if they were law enforcement officers as defined in section 8401(17) of title 5, United States Code (as added by section 101 of the conference agreement). The conferees emphasize that CIA personnel are not law enforcement officers, and indeed, are prohibited by section 102(d) (3) of the National Security Act from exercising law enforcement powers (except for CIA Security Protective Service personnel who have law enforcement powers under section 15 of the CIA Act of 1949 within CIA installations). The CIA FERS section 203 criteria employees are merely to be treated as if they were law enforcement officers for purposes of determining their FERS retirement benefits and obligations. The criteria of section 203 of the CIA Retirement Act to which the section refers permit designation of CIA FERS employees for retirement treatment equivalent to law enforcement officers if the CIA employees' duties are "(i) in support of Agency activities abroad hazardous to life or health or (ii) so specialized because of security requirements as to be clearly distinguishable from normal government employment."

-10-

Section 302(b) provides that the voluntary retirement provisions applicable to CIARDS participants under section 233 of the CIA Retirement Act also apply to CIA FERS section 203 criteria employees and that the mandatory retirement provisions applicable to CIARDS participants under section 235 of the CIA Retirement Act also apply to CIA FERS section 203 criteria employees, except that the applicable retirement benefits are those specified for such special category employees under the FERS in chapter 84 of title 5, United States Code. Section 233 of the CIA Retirement Act permits voluntary retirement by an employee who is at least 50 years of age and has rendered 20 years of service provided the employee has not less than ten years of Agency service, of which at least five years shall have been service after designation, or shall have been service prior to designation consisting of duties meeting the criteria prescribed in section 203 of the CIA Retirement Act. Section 235 of the CIA Retirement Act permits mandatory retirement of a designated employee who has completed at least 25 years of service, or who has completed 20 years of service and is at least 50 years of age, provided such employee has not less than ten years of Agency service, of which at least five years shall have been service after designation, or shall have been service prior to designation consisting of duties meeting the criteria prescribed in section 203 of the CIA Retirement Act. Section 235 also provides for automatic separation from the Agency at age 60 of a section 203-designated Agency employee receiving compensation at less than the GS-18 level and for automatic separation of such an employee at age 65 if such employee is receiving compensation at the GS-18 level or above, subject to extensions by up to a total of five years by the DCI when it is in the public interest. A

-11-

section 203-designated Agency employee who is automatically separated at age 60 or 65 receives retirement benefits under the applicable retirement system if the employee has completed five years of Agency service.

Section 302(c) provides that the recall provisions applicable to CIARDS participants under section 271 of the CIA Retirement Act also apply to CIA FERS section 203 criteria employees, except that a CIA FERS section 203 criteria employee makes contributions during recall service as provided in section 8422 of title 5, United States Code (as added by section 101 of the conference agreement). When a CIA FERS section 203 criteria employee recalled to service subsequently reverts to a retired status, his FERS annuity is redetermined.

Section 303 provides a special rule for use in determining the FERS annuity of a retiring CIA employee who is not a FERS section 203 criteria employee and who has served outside the United States during his Agency service. The portion of such annuity relating to service abroad performed by such employee after the effective date of the Federal Employees' Retirement System Act of 1986 is based on the higher accrual rate set forth in section 8415(d) of title 5, United States Code (as added by section 101 of the conference agreement), while the portion of the annuity of such employee relating to other service is based on the normal FERS accrual rate applicable to that employee's other service. The conferees provided the accrual rate increase for periods of service abroad for regular CIA FERS employees because such employees, during their service abroad, perform work substantially similar to that of FERS section 203 criteria employees, and should thus enjoy equivalent pension accrual rights during that period as a matter of equity.

-12-

Section 304 provides special rules relating to certain former spouses of certain CIA personnel. The conferees' intention is to preserve the existing regime of benefits for former spouses of CIA personnel, subject to necessary technical changes. The term "former spouse" as defined in the CIA Retirement Act (section 204(b)(4)) incorporates the requirement, applicable throughout the new Title III of the CIA Retirement Act that, to be considered a "former spouse," the former wife or husband of a CIA employee must have been married to the CIA employee for not less than 10 years of Agency service, at least 5 years of which were spent outside the United States by both the employee and the spouse (the "10/5 requirement"). As a result of section 304, CIA FERS employees' former spouses, who meet the 10/5 requirement, receive former spouses benefits analogous to those received by CIA CIARDS and CSRS employees' former spouses who meet the 10/5 requirement. Throughout the discussion below of this section, unless the context indicates otherwise, the term "former spouse" when used in reference to a CIA employee's former spouse, means only a former wife or husband who satisfies the 10/5 requirement.

Section 304(a) provides that the former spouse provisions in chapter 84 of title 5, United States Code (as added by section 101 of the conference agreement) do not apply to a CIA FERS employee who has a former spouse meeting the 10/5 requirement. Instead, the special rules provided in section 304 apply to such an employee and former spouse. For a CIA FERS employee whose former spouse did not meet the 10/5 requirement, the normal former spouses provisions of chapter 84 of title 5 (as added by section 101 of the conference agreement) would apply.

-13-

Section 304(b) provides that the provision in section 221(b)(1)(C) of the CIA Retirement Act for a joint employee/former spouse waiver of a survivor annuity by spousal agreement applies with respect to the survivor annuity for a CIA FERS employee's former spouse under section 304(c)(2).

Section 304(c) provides that certain specified provisions of the CIA Retirement Act of 1964 relating to CIA CIARDS employees apply equally to CIA FERS employees with respect to former spouses. The specified provisions made applicable deal with computation of annuities for former spouses, election of survivor benefits for former spouses, sharing of discontinued service (i.e., lump sum) benefits with former spouses, and the effect of payments under spousal agreements or court orders.

Section 304(d) provides technical special rules with respect to computation of annuities for CIA FERS employees' spouses in accordance with section 222(a) of the CIA Retirement Act as made applicable by subsection 304(c). The special rules are necessary to take account of the recall and reemployment situations of CIA FERS employees and to take account that CIA FERS employees' contributions belong in the Civil Service Retirement and Disability Fund rather than the CIA Retirement and Disability Fund to which CIA CIARDS participants contribute.

Section 304(e) provides special rules relating to the survivor annuities of CIA FERS employees' former spouses under subsections (b) and (c) of section 222 of the CIA Retirement Act as made applicable by section 304(c). The special rules adjust the application of the CIA Retirement Act provisions made applicable to CIA FERS former spouses provisions in light of the the former spouses provisions of chapter 84 of title 5, United States Code (as added by

-14-

section 101 of the conference agreement) with respect to percentage of employee annuity used in calculating former spouse survivor benefits, the employee annuity base used in such calculation, survivor annuity election, aggregation of multiple survivor annuities, and employee contributions to fund elected survivor annuities.

Section 304(f) provides for computation of the reduction of a CIA FERS employee's annuity to provide survivor annuities in the manner provided by section 8419(a) of title 5, United States Code (as added by section 101 of the conference agreement).

Section 304(g) provides that the entitlement of a retired CIA FERS employee's former spouse to a portion of the employee's annuity extends to any annuity supplement the employee receives under section 8421 of title 5, United States Code (as added by section 101 of the conference agreement).

Section 305 provides that section 201(c) of the CIA Retirement Act, which provides for the finality and unreviewability of DCI administration of the CIA Retirement Act, applies to administration of FERS by the CIA with respect to CIA employees, except that regular CIA FERS employees may appeal certain adverse retirement decisions made by the DCI to the Merit Systems Protection Board and the federal courts as provided in section 8461(e) of title 5, United States Code (as added by section 101 of the conference agreement). Subsection 8347(n) of title 5, United States Code (as amended by the conference agreement) contains a provision similar with respect to finality and unreviewability of DCI administration of the CSRS with respect to CIA employees and similar with respect to appeals of certain DCI decisions by CIA CSRS employees.

-15-

Section 306 authorizes the DCI to prescribe in regulations (in consultation with the Director, OPM and the Executive Director of the Thrift Investment Board) appropriate procedures to carry out Title III of the CIA Retirement Act. The DCI must submit the regulations to the intelligence committees of the Congress before the regulations take effect.

Section 307 authorizes the DCI to provide by regulation for the transition from CIARDS to FERS for CIARDS participants electing to participate in the FERS. Section 307 gives CIA CIARDS employees the same opportunity to elect to participate in the FERS as CIA CSRS employees enjoy under title III of the Federal Employees' Retirement System Act of 1986. The DCI must submit the regulations implementing section 307 to the intelligence committees of the Congress before the regulations take effect.

Section 507: Special Retirement Accrual for Other Intelligence Personnel

Section 507 extends, to a limited number of civilian employees of the National Security Agency and the Defense Intelligence Agency covered by the CSRS and the FERS, the special retirement accrual benefit provided to CIA regular FERS employee for periods of overseas service by section 303 of the

-16-

CIA Retirement Act (as added by section 506 of the conference agreement). The conferees concluded that NSA and DIA civilian employees within the groups covered by section 9(b)(1)(B) of the NSA Act of 1959 and section 1605(a) of Title 10, United States Code merit treatment equivalent to that afforded CIA regular FERS employees for periods of service abroad because of the nature of their intelligence duties.

Administration of CSRS and FERS for Employees of the CIA

Section 206(i) of the conference agreement amends section 8347 of title 5, United States Code, to add a new subsection 8347(n) to provide for CIA administration of the Civil Service Retirement System as it applies to CIA employees. Section 8347(n) provides for CIA administration of the CSRS as it applies to CIA employees in the same way as section 8461 of title 5, United States Code (as amended by the conference agreement) provides for CIA administration of the FERS as it applies to CIA employees. The conferees concluded that CIA administration with respect to CIA employees of all retirement systems applicable to CIA employees forms an essential part of efforts to improve the protection afforded to intelligence sources, methods and activities.

These provisions (sections 8347 and 8461) provide that the Director of Central Intelligence may, consistent with the administration of CSRS and FERS by the Office of Personnel Management and the Executive Director of the Federal Retirement Thrift Investment Board and to the extent the DCI considers appropriate, administer CSRS and FERS retirement provisions as they apply to CIA personnel. In addition, the DCI may, to the extent he considers



-17-

appropriate, perform with respect to CIA personnel the functions and duties (including with respect to disbursements from the Civil Service Retirement Fund or the Thrift Savings Plan, but not including Thrift Savings Plan investment decisions) of the Director, OPM or the Executive Director, Thrift Investment Board under subchapter III of chapter 83 or under chapter 84, which those officers would otherwise perform. To the extent that the DCI does not exercise his authority to assume the functions and duties of OPM or the Executive Director with respect to CIA CSRS and FERS employees, OPM and the Executive Director would continue to perform such functions and duties with respect to CIA CSRS and FERS employees. Allowing the DCI to assume such functions and duties to the extent he considers appropriate will permit a phased, orderly assumption of retirement administration functions and duties by the CIA.

These provisions also provide that sections 8439(b), 8461(h)(1), and 8474(c)(4) of title 5, United States Code (as added by section 101 of the conference agreement) shall be applied with respect to information relating to CIA personnel in a manner that protects intelligence sources, methods and activities. Section 8439(b) relates to auditing of the Thrift Savings Plan by a qualified public accountant and a report to the General Accounting Office. Section 8461(h)(1) relates to OPM access to information held by other agencies. Section 8474(c)(4) relates to Executive Director, Thrift Investment Board access to information held by other agencies. Although nothing in the Federal Employees' Retirement System Act of 1986, or the amendments made by the Act, impairs or affects statutes (such as section 102(d)(3) of the National Security Act of 1947 and sections 6 and 8 of the CIA Act of 1949) and

-18-

Executive Orders (such as Executive Orders 12333 governing intelligence activities and 12356 governing national security information) regarding protection of intelligence sources, methods and activities, the conferees believed it appropriate to emphasize the requirement for such protection because certain provisions of chapter 84 refer specifically address the issue of access by one agency to information held by another agency. Security practices, including clearance requirements, normally applicable to intelligence information will apply in the administration of sections 8439(b), 8461(h) (1), and 8474(c) (4) of title 5 as they are applied with respect to CIA.

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Next 17 Page(s) In Document Denied